

## **APPENDIX A**

### **ARGONNE TERMS AND CONDITIONS**

*(For Commercial Items)*

<i>Clause</i>	<i>Page</i>
1. Acceptance (Oct 1999).....	1
2. Inspection (Oct 1999).....	1
3. Assignment (Oct 1999).....	1
4. Changes (Oct 1999).....	1
5. Definitions (Oct 1999).....	1
6. Excusable Delays (Oct 1999).....	1
7. Payment (Oct 1999) .....	2
8. Risk Of Loss (Oct 1999).....	2
9. Taxes (Oct 1999) .....	2
10. Termination For The Laboratory's Convenience (Oct 1999).....	2
11. Termination For Cause (Oct 1999) .....	2
12. Title (Oct 1999) .....	3
13. Warranty Of Supplies (Oct 1999) .....	3
14. Warranty Of Services (Oct 1999).....	3
15. Limitation Of Liability (Oct 1999) .....	4
16. Contract Terms And Conditions Required To Implement Statutes Or Executive Orders--Commercial Items (Dec 2001).....	4
17. Other Compliances (Oct 1999) .....	4
18. Environmental Protection (Oct 1999) .....	4
19. Authorization And Consent (Apr 1984).....	5
20. Patent Indemnity - Supplies And Services (Oct 1999) .....	5
21. Reporting Of Royalties (Oct 1999) .....	5
22. Notice And Assistance Regarding Patent And Copyright Infringement (Aug 1996) .....	6
23. Subcontracts For Commercial Items (Dec 2001).....	6
24. Laboratory Site Access By Non-U.S. Nationals (Jun 2001).....	7
25. Whistleblower Protection For Contractor Employees (Apr 1999) .....	8
26. Costs Associated With Whistleblower Actions (Month And Year Tbd) .....	8
27. Vehicle Liability Insurance Coverage (Oct 1999) .....	10
28. Integration Clause (Oct 1999) .....	10
29. Prohibition Of Segregated Facilities (Feb 1999) .....	10
30. Suspect Counterfeit Parts (Oct 1999) .....	11

**1. ACCEPTANCE (OCT 1999)**

Acceptance of this Purchase Order or contract (hereinafter called the “contract”) must be in accordance with and strictly limited to these Terms and Conditions. An attempted acknowledgment or acceptance which contains provisions conflicting or additional to these Terms and Conditions or which varies any term or condition shall have no force or effect. Performance by the Contractor without an effective acknowledgment shall be deemed to be performance in accordance with the Terms and Conditions of this contract.

**2. INSPECTION (OCT 1999)**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Laboratory reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Laboratory may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Laboratory must exercise its post acceptance rights (a) within a reasonable time after the defect was discovered or should have been discovered; and (b) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

**3. ASSIGNMENT (OCT 1999)**

Neither this contract nor any interest therein nor claim there under shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Laboratory; provided, that the Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract may be assigned to a bank, trust company or other financing institution, including any Federal lending institution.

**4. CHANGES (OCT 1999)**

Changes in the Terms and Conditions of this contract may be made only by written agreement of the parties.

**5. DEFINITIONS (OCT 1999)**

The clause at FAR 52.202-1, Definitions, is incorporated in this contract by reference.

**6. EXCUSABLE DELAYS (OCT 1999)**

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Laboratory, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Laboratory in writing as soon as it is reasonably possible after

the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Laboratory of the cessation of such occurrence.

**7. PAYMENT (OCT 1999)**

Payment shall be made for items accepted by the Laboratory that have been delivered to the delivery destinations set forth in this contract. Upon the submission of proper invoices or vouchers, the Laboratory shall make payment at the prices stipulated in this contract by check, electronic funds, or as the parties may otherwise agree. In connection with any discount offered for early payment, time shall be computed from the date the invoice is received at the Laboratory. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

**8. RISK OF LOSS (OCT 1999)**

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Laboratory upon:

- (a) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (b) Delivery of the supplies to the Laboratory at the destination specified in the contract, if transportation is f.o.b. destination.

**9. TAXES (OCT 1999)**

The contract price includes all applicable Federal, State, and local taxes and duties.

**10. TERMINATION FOR THE LABORATORY'S CONVENIENCE (OCT 1999)**

The Laboratory reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Laboratory using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Laboratory any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

**11. TERMINATION FOR CAUSE (OCT 1999)**

The Laboratory may terminate this contract, or any part hereof, for cause in the event of any material default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or

fails to provide the Laboratory, upon request, with adequate assurances of future performance. In the event of termination for cause, the Laboratory shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Laboratory for any and all rights and remedies provided by law. If it is determined that the Laboratory improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

## **12. TITLE (OCT 1999)**

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Laboratory takes physical possession.

## **13. WARRANTY OF SUPPLIES (OCT 1999)**

The Contractor warrants that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. In addition to the Warranty Provisions herein, all computer software and hardware provided must be warranted to be Year 2000 compliant, as defined at FAR 39.002.

The contractor shall provide computer products that meet EPA Energy Star requirements for energy efficiency. By acceptance of this contract, the contractor certifies that all microcomputers, including personal computers, monitors, and printers to be provided under this contract meet EPA Energy Star requirements for energy efficiency.

## **14. WARRANTY OF SERVICES (OCT 1999)**

### **(a.) Definitions**

“Acceptance”, as used in this clause, means the act of an authorized representative of the Laboratory by which the Laboratory assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

“Correction”, as used in this clause, means the elimination of a defect.

“Services”, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

- (b.)** Notwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in the workmanship and conform to the requirements of this contract.
- (c.)** If any of the services do not conform with contract requirements, the Laboratory may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Laboratory may:

- (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- (2) Reduce the contract price to reflect the reduced value of the services performed.

**15. LIMITATION OF LIABILITY (OCT 1999)**

Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Laboratory for consequential damages resulting from any defect or deficiencies in accepted items.

**16. CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (DEC 2001)**

The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (a) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (b) FAR 52.222-26, Equal Opportunity (E.O. 11246);
- (c) FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);
- (d) FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793);
- (e) FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

**17. OTHER COMPLIANCES (OCT 1999)**

The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

**18. ENVIRONMENTAL PROTECTION (OCT 1999)**

In performing this contract the Contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations and directives.

**19. AUTHORIZATION AND CONSENT (APR 1984)**

The Government has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract.)

**20. PATENT INDEMNITY - SUPPLIES AND SERVICES (OCT 1999)**

If the amount of this contract is in excess of \$10,000, the Contractor shall indemnify the Laboratory, the Government, and their officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government or the Laboratory of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government (with notice to the Laboratory) of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

- (a) An infringement resulting from compliance with specific written instructions of the Laboratory or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
- (b) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or
- (c) A claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**21. REPORTING OF ROYALTIES (OCT 1999)**

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Laboratory, The Contractor agrees to report in writing to the Government through the Laboratory during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which royalties are to be paid. The approval of DOE or the Laboratory of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

**22. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

- (a) The Contractor shall report to the Government through the Laboratory promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government when requested by the Government or the Laboratory, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government or the Laboratory.
- (c) This clause shall be included in all subcontracts.

**23. SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)**

- (a) Definitions

*"Commercial item,"* as used in this clause, means any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public;

*"Subcontract,"* as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The following clauses shall be flowed down to subcontracts for commercial items:
  - (i) Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include the clause "Utilization of Small Business Plan" in lower tier subcontracts that offer subcontracting opportunities.
  - (ii) Equal Opportunity (Feb 1999) (E.O. 11246).

- (iii) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
  - (iv) Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C.793).
  - (v) Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
  - (vi) Preference for Privately Owned U.S.-Flagged Commercial Vessels (Jun 2000) (46 U.S.C. Appx 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

## **24. LABORATORY SITE ACCESS BY NON-U.S. NATIONALS (JUN 2001)**

Site access, including cyber access utilizing a Laboratory account, by all non-U.S. citizens must be reviewed and approved by the Laboratory Director or his designee. All new requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for less than 30 days in a 12-month period) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible (a minimum of 30 days for a sensitive country, 7 days for a non-sensitive country)

For visits and assignments involving a foreign national from a non-sensitive country, and which do not involve sensitive subjects or access to security areas, the Laboratory generic security plan is applicable, and indices checks are not required. However, time is required for review of the ANL-593 and approval by the Laboratory of the visit.

For visits or assignments involving a foreign national from a "Sensitive Country", and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be accomplished, and a DOE indices check can be completed prior to approval. In such cases, a specific security plan is required to be submitted to the Foreign Visits and Assignments Office with the ANL-593 form requesting the visit.

For visits or assignments involving a foreign national from a "Terrorist Supporting Country", (which currently include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria), specific approval of the visit/assignment by the Secretary of Energy is required. This approval, if granted, may take up to six weeks. Information, in addition to that required on the ANL-593, is necessary for the request to the Secretary. For assistance in preparing a request, contact the ANL Foreign National Visits and Assignments Administrator (Phone: 630-252-1142).



In any case involving a sensitive subject, a visit or assignment by a national from a sensitive country, or entry into a security area, lead time prior to the anticipated start of the visit/assignment is especially important. An indices check normally takes 30 days after completion of all required pre-clearance documents, but can take considerably longer (once obtained, an indices check may be valid for two years). This time frame shall not constitute the basis for any equitable adjustment or claim to the contract price or performance/delivery period.

**25. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)**

- (a) The Contractor shall comply with the requirements of the “DOE Contractor Employee Protection Program” at 10CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

**26. COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS (MONTH AND YEAR TBD)**

- (a) Definitions.
  - (1) "Adverse determination" means.
    - (i) A recommendation decision under 29 CFR part 24 by an administrative law judge that the Contractor has violated the employee protection provisions of the statutes for which the Secretary of Labor has been assigned responsibility;
    - (ii) An initial agency decision under 10 CFR 708.10, that the Contractor has engaged in conduct prohibited by 10 CFR 708.5; or
    - (iii) A decision against the Contractor by the Secretary under 41 U.S.C. 265(c)(1).
    - (iv) A judgment or other determination of liability against the Contractor and in favor of the employee in an action in a judicial forum.
  - (2) "Costs" include any costs or expenses relating to an employee action, as defined below, including but not limited to back pay, damages or other award in the form of relief to the employee; administrative and clerical expenses; the cost of legal services, including litigation costs, whether provided by the Contractor or procured from outside sources; the costs of services of accountants, consultants or other experts retained by the Contractor; all elements of related compensation, costs and expenses of employees, officers and directors; and any similar costs incurred after the commencement of the employee action.

- (3) "Employee action" means an action brought by an employee of the Contractor under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265, or an action filed in federal or state court for redress of discrimination or discriminatory action by a Contractor based on activities that would be actionable under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265.
  - (4) "Litigation costs" include attorney, consultant and expert witness fees associated with the defense of an employee action, but exclude the costs of implementing a settlement, judgment, or Secretarial Order.
- (b) Segregation of costs. All litigation costs incurred in the investigation and defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Laboratory Procurement Representative provisionally disallows such costs, then the Contractor may not use funds advanced by the Laboratory under the contract to finance the litigation.
- (c) Allowability of litigation and other costs.
  - (1) Litigation costs, including the use of alternative dispute resolution and settlement costs incurred in connection with an employee action under this clause are allowable if the employee action is resolved prior to an adverse determination, provided such costs are otherwise allowable under the clauses entitled "Insurance-Litigation and Claims," "Cost Prohibitions Related to Legal and Other Proceeding," and other relevant provisions of this contract.
  - (2) In actions in which an adverse determination is issued, litigation, settlement and judgment costs, as well as the cost of complying with any Secretarial Order, are not allowable, unless:
    - (i) The Contractor prevails in a proceeding subsequent to the adverse determination at which a final decision is rendered in the action; or
    - (ii) The Laboratory Procurement Representative has, on the basis that it is in the best interest of the Laboratory, approved the Contractor's request to proceed with defense of an action rather than entering into a settlement with the employee or accepting an adverse determination or other interim decision prior to a final decision.
  - (3) Subsequent to an adverse determination, litigation costs, as well as costs associated with any interim relief granted, may not be paid from contract funds; provided, however, that the Laboratory Procurement Representative may, in appropriate circumstances, provide for conditional payment from contract funds upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs, plus interest, if they are subsequently determined to be unallowable.

- (4) Litigation costs incurred to defend an appeal by the employee from an interim or final decision in the Contractor's favor are allowable provided they are otherwise allowable under the clauses entitled "Insurance Litigation and Claims" and "Cost Prohibitions Related to Legal and Other Proceedings," and other relevant provisions of the contract.
- (d) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988 as amended. (See the clause entitled "Cost Prohibitions Related to Legal and Other Proceedings.")

**27. VEHICLE LIABILITY INSURANCE COVERAGE (OCT 1999)**

In the event a Government or Laboratory vehicle (including Laboratory-rented vehicle) will be utilized by the contractor during the course of work under this contract, contractor agrees to obtain and maintain appropriate levels of automobile liability coverage for property damage and bodily injury and such insurance shall be primary.

**28. INTEGRATION CLAUSE (OCT 1999)**

This contract represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract and there are no understandings or agreements other than those incorporated into this contract.

**29. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every sub-contract and purchase order that is subject to the Equal Opportunity clause of this contract.

### **30. SUSPECT COUNTERFEIT PARTS (OCT 1999)**

- (a) "Suspect/Counterfeit Parts" are parts that may be of new manufacture, but labeled to represent a different class of parts, or used and/or refurbished parts, complete with false labeling, that are represented as new parts. Three categories of suspect/counterfeit parts exist:
  - (1) Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with headmarks or stamps shown on the headmark list that was prepared by the United States Customs Service (see Attachment I to this clause, or its latest revision);
  - (2) Piping valves and flanges bearing labels that falsely indicate that the items meet recognized ASME or ASTM consensus standards; and,
  - (3) Used or refurbished molded-case electrical circuit breakers or similar type switch gear.
- (b) Supplies furnished to the Laboratory under this contract shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this contract whether on or off the Laboratory site.
- (c) If suspect/counterfeit parts are furnished under this contract and are found on the Laboratory site, such parts shall be impounded by the Laboratory or they shall be removed by the Contractor as directed by the Laboratory. The Contractor shall promptly replace such parts with supplies acceptable to the Laboratory and the Contractor shall be liable rights for all costs relating to impoundment, removal, and replacement.
- (d) The rights of the Laboratory in this clause are in addition to any other rights provided by law or under this contract.